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 3202. [Reserved].
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Editorial Notes

PRIOR PROVISIONS

A prior chapter 221 “PLANNING AND SOLICITATION GENERALLY”, as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3201, was repealed by Pub. L. 116–283, div. A, title XVIII, §1811(b), Jan. 1, 2021, 134 Stat. 4164.

Statutory Notes and Related Subsidiaries

RESTRICTION ON PROCUREMENT OR PURCHASING BY DEPARTMENT OF DEFENSE OF TURNOUT GEAR FOR FIREFIGHTERS CONTAINING PERFLUOROALKYL SUBSTANCES OR POLYFLUOROALKYL SUBSTANCES

Pub. L. 117–263, div. A, title III, §345, Dec. 23, 2022, 136 Stat. 2530, provided that:

“(a) PROHIBITION ON PROCUREMENT AND PURCHASING.—Subject to subsection (d), beginning on October 1, 2026, the Secretary of Defense may not enter into a contract to procure or purchase covered personal protective firefighting equipment for use by Federal or civilian firefighters if such equipment contains an intentionally added perfluoroalkyl substance or polyfluoroalkyl substance.

“(b) IMPLEMENTATION.—

“(1) INCLUSION IN CONTRACTS.—The Secretary of Defense shall include the prohibition under subsection (a) in any contract entered into by the Department of Defense to procure covered personal protective firefighting equipment for use by Federal or civilian firefighters.

“(2) NO OBLIGATION TO TEST.—In carrying out the prohibition under subsection (a), the Secretary shall not have an obligation to test covered personal protective firefighting equipment to confirm the absence of perfluoroalkyl substances or polyfluoroalkyl substances.

“(c) EXISTING INVENTORY.—Nothing in this section shall impact existing inventories of covered personal protective firefighting equipment.

“(d) AVAILABILITY OF ALTERNATIVES.—

“(1) IN GENERAL.—The requirement under subsection (a) shall be subject to the availability of sufficiently protective covered personal protective firefighting equipment that does not contain intentionally added perfluoroalkyl substances or polyfluoroalkyl substances.

“(2) EXTENSION OF EFFECTIVE DATE.—If the Secretary of Defense determines that no sufficiently protective covered personal protective firefighting equipment that does not contain intentionally added perfluoroalkyl substances or polyfluoroalkyl substances is available, the deadline under subsection (a) shall be extended until the Secretary determines that such covered personal protective firefighting equipment is available.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘covered personal protective firefighting equipment’ means—

“(A) any product that provides protection to the upper and lower torso, arms, legs, head, hands, and feet; or

“(B) any other personal protective firefighting equipment, as determined by the Secretary of Defense.

“(2) The term ‘perfluoroalkyl substance’ means a man-made chemical of which all of the carbon atoms are fully fluorinated carbon atoms.

“(3) The term ‘polyfluoroalkyl substance’ means a man-made chemical containing at least one fully fluorinated carbon atom and at least one non-fully fluorinated carbon atom.”

MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING

Pub. L. 116–92, div. A, title VIII, §837, Dec. 20, 2019, 133 Stat. 1497, provided that:

“(a) REPORT.—Not later than December 15, 2019, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes the guidance required under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out below]). The Under Secretary of Defense for Acquisition and Sustainment shall ensure such guidance includes the business case elements required by an acquisition program established pursuant to such guidance and the metrics required to assess the performance of such a program.

“(b) LIMITATION.—

“(1) IN GENERAL.—Beginning on December 15, 2019, if the Under Secretary of Defense for Acquisition and Sustainment has not submitted the report required under subsection (a), not more than 75 percent of the funds specified in paragraph (2) may be obligated or expended until the date on which the report required under subsection (a) has been submitted.

“(2) FUNDS SPECIFIED.—The funds specified in this paragraph are the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense that remain unobligated as of December 15, 2019, for the following:

“(A) The execution of any acquisition program established pursuant to the guidance required under such section 804(a).

“(B) The operations of the Office of the Under Secretary of Defense for Research & Engineering.

“(C) The operations of the Office of the Under Secretary of Defense for Acquisition & Sustainment.

“(D) The operations of the Office of the Director of Cost Analysis and Program Evaluation.

“(E) The operations of the offices of the service acquisition executives of the military departments.”

Pub. L. 114–92, div. A, title VIII, §804, Nov. 25, 2015, 129 Stat. 882, as amended by Pub. L. 114–328, div. A, title VIII, §§849(a), 864(b), 897, title X, §1081(c)(2), Dec. 23, 2016, 130 Stat. 2293, 2304, 2327, 2419; Pub. L. 115–91, div. A, title VIII, §866, Dec. 12, 2017, 131 Stat. 1495; Pub. L. 116–92, div. A, title IX, §902(33), Dec. 20, 2019, 133 Stat. 1546; Pub. L. 116–283, div. A, title VIII, §805, Jan. 1, 2021, 134 Stat. 3742, provided that:

“(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Comptroller of the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish guidance for a ‘middle tier’ of acquisition programs that are intended to be completed in a period of two to five years.

“(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

“(1) RAPID PROTOTYPING.—The rapid prototyping pathway shall provide for the use of innovative technologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environ-

ment and provide for a residual operational capability within five years of the development of an approved requirement.

“(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded systems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

“(c) EXPEDITED PROCESS.—

“(1) IN GENERAL.—The guidance required by subsection (a) shall provide for a streamlined and coordinated requirements, budget, and acquisition process that results in the development of an approved requirement for each program in a period of not more than six months from the time that the process is initiated. Programs that are subject to the guidance shall not be subject to the Joint Capabilities Integration and Development System Manual and Department of Defense Directive 5000.01, except to the extent specifically provided in the guidance.

“(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

“(A) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

“(B) a process for developing and implementing acquisition and funding strategies for the program;

“(C) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

“(D) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

“(3) RAPID FIELDING.—With respect to the rapid fielding pathway, the guidance shall include—

“(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

“(B) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

“(C) a process for developing and implementing acquisition and funding strategies for the program;

“(D) a process for considering lifecycle costs and addressing issues of logistics support and system interoperability; and

“(E) a process for identifying and exploiting opportunities to use the rapid fielding pathway to reduce total ownership costs.

“(4) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

“(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

“(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

“(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

“(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

“(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

“(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

“(G) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

“(d) RAPID PROTOTYPING FUNDS.—

“(1) DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

“(A) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the ‘Department of Defense Rapid Prototyping Fund’ to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to this section and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Deputy Secretary of Defense. The Fund shall consist of—

“(i) amounts appropriated to the Fund;

“(ii) amounts credited to the Fund pursuant to section 828 of this Act [set out as a note preceding section 4201 of this title]; and

“(iii) any other amounts appropriated to, credited to, or transferred to the Fund.

“(B) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense.

“(C) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of all transfers under paragraph (2) within 5 business days after such transfer. Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.”

“(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.

“(e) REPORT.—Not later than 30 days after the date of termination of an acquisition program commenced using the authority under this section, the Secretary of Defense shall submit to Congress a notification of such termination. Such notice shall include—

“(1) the initial amount of a contract awarded under such acquisition program;

“(2) the aggregate amount of funds awarded under such contract; and

“(3) written documentation of the reason for termination of such acquisition program.”

[Pub. L. 114-328, div. A, title X, §1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(2) to section 804 of Pub. L. 114-92, set out above, is effective as of Nov. 25, 2015, and as if included in Pub. L. 114-92 as enacted.]

USE OF ALTERNATIVE ACQUISITION PATHS TO ACQUIRE CRITICAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114-92, div. A, title VIII, §805, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114-328, div. A, title VIII, §849(b), Dec. 23, 2016, 130 Stat. 2293, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

“(1) be separate from existing acquisition procedures;

“(2) be supported by streamlined contracting, budgeting, life-cycle cost management, and requirements processes;

“(3) establish alternative acquisition paths based on the capabilities being bought and the time needed to deploy these capabilities; and

“(4) maximize the use of flexible authorities in existing law and regulation.”

REVIEW AND JUSTIFICATION OF PASS-THROUGH CONTRACTS

Pub. L. 112-239, div. A, title VIII, §802, Jan. 2, 2013, 126 Stat. 1824, provided that: “Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such guidance and regulations as may be necessary to ensure that in any case in which an offeror for a contract or a task or delivery order informs the agency pursuant to section 52.215-22 of the Federal Acquisition Regulation that the offeror intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the contracting officer for the contract is required to—

“(1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work;

“(2) make a written determination that the contracting approach selected is in the best interest of the Government; and

“(3) document the basis for such determination.”

REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS

Pub. L. 111-383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256, which required a review of, and subsequent report on, the process for the fielding of capabilities in response to urgent operational needs, was repealed by Pub. L. 117-263, div. A, title VIII, §804(c)(1), Dec. 23, 2022, 136 Stat. 2701.

INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE

Pub. L. 110-417, [div. A], title VIII, §804(a)–(c), Oct. 14, 2008, 122 Stat. 4519, provided that:

“(a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law

109-364; 120 Stat. 2326) [set out below] for purposes of such section.

“(b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES.—For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326) shall apply to such agency as follows:

“(1) The review and determination required by subsection (a)(1) of such section shall be completed by not later than March 15, 2009.

“(2) The review and determination required by subsection (a)(2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency’s procurement of property and services on behalf of the Department of Defense in fiscal year 2009.

“(3) The memorandum of understanding required by subsection (c)(1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

“(4) The limitation specified in subsection (d)(1) of such section shall apply after March 15, 2009, and before June 16, 2010.

“(5) The limitation specified in subsection (d)(2) of such section shall apply after June 15, 2010.

“(6) The limitation required by subsection (d)(3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

“(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term ‘covered non-defense agency’ means each of the following:

“(1) The Department of Commerce.

“(2) The Department of Energy.”

Pub. L. 110-181, div. A, title VIII, §801, Jan. 28, 2008, 122 Stat. 202, as amended by Pub. L. 110-417, [div. A], title VIII, §804(d), Oct. 14, 2008, 122 Stat. 4519; Pub. L. 111-84, div. A, title VIII, §806, Oct. 28, 2009, 123 Stat. 2404; Pub. L. 112-81, div. A, title VIII, §817, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 112-239, div. A, title VIII, §§801, 805, Jan. 2, 2013, 126 Stat. 1824, 1826; Pub. L. 113-291, div. A, title X, §1071(d)(1)(B), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 116-92, div. A, title IX, §902(42), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116-283, div. A, title XVIII, §1806(e)(5), Jan. 1, 2021, 134 Stat. 4156, provided that:

“(a) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

“(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency may jointly—

“(A) review—

“(i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and

“(ii) the administration of such policies, procedures, and internal controls; and

“(B) determine in writing whether such covered non-defense agency is or is not compliant with applicable procurement requirements.

“(2) SEPARATE REVIEWS AND DETERMINATIONS.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

“(3) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS.—Not later than one year before a review and determination is to be performed under this subsection with respect to a covered non-defense